



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R09-OAR-2018-0222; FRL-9986-31-Region 9]**

#### **Approval of Arizona Air Plan; Hayden Lead Nonattainment Area Plan for the 2008 Lead Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Arizona to meet Clean Air Act (CAA or “Act”) requirements applicable to the Hayden lead nonattainment area (“Hayden Lead NAA”). The EPA is approving the base year emissions inventory, the attainment demonstration, the control strategy, including reasonably available control technology and reasonably available control measures demonstrations, the reasonable further progress demonstration, and the contingency measure as meeting the requirements of the CAA and the EPA’s implementing regulations for the 2008 lead national ambient air quality standard (NAAQS). We also find that the State has demonstrated that the Arizona SIP meets the new source review (NSR) requirements of CAA section 172(c)(5) for the Hayden Lead NAA.

**DATES:** This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2018-0222. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g.,

Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Ginger Vagenas, EPA Region IX, 415-972-3964, [Vagenas.Ginger@epa.gov](mailto:Vagenas.Ginger@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms “we,” “us,” and “our” mean the EPA.

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### **I. Background**

Lead is generally emitted in the form of particles that are deposited in water, soil, and dust. People may be exposed to lead by inhaling it or by ingesting lead-contaminated food, water, soil, or dust. Once in the body, lead is quickly absorbed into the bloodstream and can result in a broad range of adverse health effects including damage to the central nervous system, cardiovascular function, kidneys, immune system, and red blood cells. Children are particularly vulnerable to lead exposure, in part because they are more likely to ingest lead and in part because their still-developing bodies are more sensitive to the effects of lead. The harmful effects to children’s developing nervous systems (including their brains) arising from lead exposure may

include IQ<sup>1</sup> loss, poor academic achievement, long-term learning disabilities, and an increased risk of delinquent behavior.

The EPA first established a lead standard in 1978 at 1.5 micrograms per meter cubed ( $\mu\text{g}/\text{m}^3$ ) as a quarterly average.<sup>2</sup> Based on new health and scientific data, the EPA revised the federal lead standard to 0.15  $\mu\text{g}/\text{m}^3$  and revised the averaging time for the standard on October 15, 2008.<sup>3</sup> A violation of the standard occurs when ambient lead concentrations exceed 0.15  $\mu\text{g}/\text{m}^3$  averaged over a 3-month rolling period.

Following the promulgation of a new or revised NAAQS, the EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS. This process is set forth in section 107(d)(1) of the Act. After initially being designated unclassifiable due to insufficient monitoring data, the Hayden area was redesignated nonattainment on September 3, 2014, effective October 3, 2014.<sup>4,5</sup> The designation of the Hayden area as nonattainment for the 2008 lead NAAQS triggered requirements under section 191(a) of the CAA requiring Arizona to submit a SIP revision with a plan to attain the standard as expeditiously as practicable, but no later than October 3, 2019.

The Arizona Department of Environmental Quality (ADEQ) is the air quality agency that develops SIP revisions for the Hayden area. The SIP revision for the Hayden Lead NAA, entitled “SIP Revision: Hayden Lead Nonattainment Area” (“2017 Hayden Lead Plan” or “Plan”) was

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<sup>1</sup> IQ (intelligence quotient) is a score created by dividing a person's mental age score, obtained by administering an intelligence test, by the person's chronological age, both expressed in terms of years and months. “Glossary of Important Assessment and Measurement Terms,” Philadelphia, PA: National Council on Measurement in Education. 2016.

<sup>2</sup> 43 FR 46246 (October 5, 1978).

<sup>3</sup> 73 FR 66964 (November 12, 2008) (“lead NAAQS rule”).

<sup>4</sup> 79 FR 52205.

<sup>5</sup> For an exact description of the Hayden Lead NAA, see 40 CFR 81.303.

adopted by ADEQ on March 3, 2017, and submitted to the EPA on the same day.<sup>6</sup> The Plan includes a 2012 base year emissions inventory, a demonstration that controls required under the Plan are sufficient to bring the area into attainment of the 2008 lead NAAQS, an analysis that demonstrates reasonably available control measures/reasonably available control technology (RACM/RACT) levels of control are required to be implemented, a demonstration that the Plan provides for reasonable further progress (RFP) towards attainment, and a contingency measure that will be implemented if the area fails to make RFP or to attain the NAAQS by the applicable deadlines. The Plan also describes ADEQ's NSR program and its intention to submit revisions to its NSR rules to address deficiencies identified by the EPA.<sup>7</sup>

## **II. Proposed Action and Public Comment**

On July 3, 2018, the EPA published a notice of proposed rulemaking in which we proposed to approve the Plan as a revision to the Arizona SIP.<sup>8,9</sup> The rationale for our proposed action is included in the proposal, and will not be restated here.

The EPA's proposed action provided a 30-day public comment period. During this period, we received six anonymous comments. After reviewing the comments, we determined that two were "test comments" that did not include any text and therefore do not necessitate a

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<sup>6</sup> Letter dated March 3, 2017, from Timothy S. Franquist, Director, Air Quality Division, ADEQ, to Alexis Strauss, Acting Regional Administrator, EPA Region IX.

<sup>7</sup> ADEQ subsequently submitted the changes and, on May 4, 2018, the EPA approved the revision into the SIP (83 FR 19631). The SIP revision ensures that ADEQ's rules provide for appropriate NSR for lead sources undergoing construction or major modification in the Hayden Lead NAA.

<sup>8</sup> 83 FR 31087.

<sup>9</sup> ADEQ has determined that the cause of the nonattainment status in the Hayden area is the primary copper smelter owned and operated by ASARCO, which accounts for over 99 percent of lead emissions, and that the emissions generally come from the hot-metal smelting process and lead-bearing fugitive dust. Plan, 38. ADEQ's control strategy for the Hayden Lead NAA relies on the implementation of two source-specific regulations in the Arizona Administrative Code: Rule R18-2-B1301 (limits on Lead Emissions from the Hayden Smelter) and Rule R-18-2-B1301.01 (Limits on Lead-Bearing Fugitive Dust from the Hayden Smelter), and two associated appendices. We approved Rule R-18-B1301.01 and Appendix 15 into the Arizona SIP on February 22, 2018 (83 FR 7614) and, in a notice signed on October 30, 2018, we approved Rule R18-2-B1301 and Appendix 14.

response. Three comments were outside the scope of our proposed action and failed to identify any material issue necessitating a response.

The sixth comment included the observation that the EPA had used the term “off-road” when describing a portion of mobile source inventory, but the term “non-road” was used in the table summarizing ADEQ’s base year emissions inventory. The commenter asked if, to make it consistent, would “off-road” be used throughout the proposal?

In the proposal, we explained that emissions can be grouped into two general categories: stationary and mobile. We further noted that stationary source category can be subdivided into point and area sources and that the mobile source category can be subdivided into on-road and off-road categories.<sup>10</sup> In tables 1 and 3, which immediately follow that discussion, we listed emissions for point, area, mobile source (non-road) and mobile source (on-road) categories.<sup>11</sup> In our proposed action, we used the terms interchangeably and believe their equivalent meaning is apparent from the context.

The comments have been added to the docket for this action and are accessible at <https://www.regulations.gov/docket?D=EPA-R09-OAR-2018-0222>.

### **III. Final Action**

For the reasons discussed in the proposal, the EPA is approving under CAA section 110(k)(3) the 2017 Hayden Lead Plan as a revision to the Arizona SIP. Specifically, we are approving:

(1) the SIP’s base year emissions inventory as meeting the requirements of CAA section 172(c)(3) and 40 CFR 51.117(e)(1);

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<sup>10</sup> 83 FR 31087, 31090.

<sup>11</sup> Id. Note that the terms off-road and non-road do not appear elsewhere in the notice.

(2) the attainment demonstration, including air quality modeling, as meeting the requirements of CAA section 172(c)(1);

(3) the RACM/RACT demonstration as meeting the requirements of CAA section 172(c)(1);

(4) the RFP demonstration as meeting the requirements of CAA section 172(c)(2); and

(5) the contingency measure as meeting the requirements of the CAA section 172(c)(9);

We also find that the State has demonstrated that the Arizona SIP meets the NSR requirements of CAA section 172(c)(5) for the Hayden Lead NAA.

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). We offered to consult with San Carlos Apache

Tribe, which has lands adjacent to the Hayden lead nonattainment area. The tribe did not respond to the EPA's offer to consult.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)



**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, and Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: October 31, 2018.

Deborah Jordan,  
Acting Regional Administrator,  
Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## **PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for Part 52 continues to read as follows:

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

### **Subpart D – Arizona**

2. Section 52.120 in paragraph (e), Table 1 is amended by adding, under the table heading “Part D Elements and Plans (Other than for the Metropolitan Phoenix and Tucson Areas),” an entry for “SIP Revision: Hayden Lead Nonattainment Area, excluding Appendix C.” after the entry for “Maintenance Plan Renewal, 1971 Sulfur Dioxide National Ambient Air Quality Standards, Douglas Maintenance Area.”

The addition reads as follows:

#### **§52.120 Identification of plan.**

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(e) \* \* \*

**TABLE 1—EPA-APPROVED NON-REGULATORY AND QUASI-REGULATORY MEASURES**

[Excluding certain resolutions and statutes, which are listed in tables 2 and 3, respectively]<sup>1</sup>

<b>Name of SIP provision</b>	<b>Applicable geographic or nonattainment area or title/subject</b>	<b>State submittal date</b>	<b>EPA approval date</b>	<b>Explanation</b>
<b>The State of Arizona Air Pollution Control Implementation Plan</b>				
* * * * *				
SIP Revision: Hayden Lead Nonattainment Area, excluding Appendix C	Hayden, AZ Lead Nonattainment Area	March 3, 2017	<b>[INSERT Federal Register CITATION], [INSERT DATE OF</b>	Adopted by the Arizona Department of Environmental Quality on

			<b>PUBLICATION IN THE FEDERAL REGISTER]</b>	March 3, 2017.
*	*	*	*	*

<sup>1</sup> Table 1 is divided into three parts: Clean Air Act Section 110(a)(2) State Implementation Plan Elements (excluding Part D Elements and Plans), Part D Elements and Plans (other than for the Metropolitan Phoenix or Tucson Areas), and Part D Elements and Plans for the Metropolitan Phoenix and Tucson Areas.

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[FR Doc. 2018-24740 Filed: 11/13/2018 8:45 am; Publication Date: 11/14/2018]